IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16651 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAFIQ YUSUFBHAI SHEIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16651 of 2003

MR MM TIRMIZI for Petitioner No. 1

RULE SERVED for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 06/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India

for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 03/11/03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that one prohibition offence was registered against him before Western Division Prohibition Station at C.R.No.1699 / 2002 on 30/10/03. It was also alleged against him that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities. On the strength of the aforesaid one registered offence and unregistered cases, an order of detention was passed against the petitioner.

3. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that the only ground for detention supplied to the petitioner was that the detaining authority considered the fact that the petitioner was in judicial custody. Thereafter, the authority draw an inference that the petitioner would apply for bail, then would get himself bailed out and thereafter, would continue with the said bootlegging activities. It has been contended that there was no material before the detaining authority for passing the aforesaid order, and therefore, the order of his detention is illegal and it may be quashed and set aside.

4. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP appeared on behalf of the respondents. The learned AGP produces affidavit, which is taken on record. I have heard the learned advocates for the parties and have perused the papers.

5. During the course of hearing, the learned advocate for the petitioner has drawn my attention to the observations made in the ground of detention placed at page 10. There it has been observed that the petitioner was in judicial custody at the relevant point of time. That he would apply for bail and would get himself bailed out and thereafter would continue the bootlegging activities. Here the learned advocate for the petitioner has argued that there was no material before the detaining authority for making the aforesaid observation.

6. On this aspect of the case, the learned advocate for the petitioner has relied upon a decision of the Hon'ble the Apex Court in the case of Amritlal & Ors.

V/s. Union Government reported in AIR 2000 SC 3675. The relevant observations can be gathered from para 4, 6 and (head note)

"There must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and detention order based on such material is liable to be quashed. The reasoning that there is "likelihood to be released on bail" is different from "likelihood of his moving an application for bail"."

6.1 In the aforesaid set of reasonings and findings, the Hon'ble the Apex Court found that the order of detention could not be sustained in the eye of law. I respectfully follow the principle enunciated in the aforesaid decision and find that in the present case also, the detaining authority did not have any material to record an observation to the effect that the petitioner would apply for bail, then would get himself bailed out and thereafter would continue his bootlegging activities.

7. In view of the aforesaid principle enunciated in the aforesaid matter, the order of detention is required to be quashed and set aside.

8. For the foregoing reasons, this petition is allowed. The impugned order of detention dated 03/11/03 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. Detenu, Rafiq Yusufbhai Sheikh, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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